

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3871 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAJPALSINGH DHUPIA

Versus

STATE OF GUJARAT

Appearance:

MR SHIRISH JOSHI for Petitioners
MR SP DAVE ADDG.GOVERNMENT PLEADER
for Respondent No. 1
SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 07/07/97

ORAL JUDGEMENT

Heard Mr.Joshi for the petitioners and Mr.
S.P.Dave, AGP for the respondents. Mr.Joshi tenders an
amendment. The same is granted.

2. Rule on the petition returnable forthwith.

3. Mr.Joshi and Mr. Dave have made their submissions.

4. From the averments made in the petition and from the statements made by Mr. Dave, on instructions, it appears that the petitioners were allotted certain plot of land on 20th February, 1995 for certain purpose situated at Saputara, Dist. Dang. That order was sought to be taken in revision by the State Government and a notice dated 4th March 1997 was accordingly given to the petitioners on behalf of the State Government. That notice was signed on behalf of the Collector of Dang. That notice states that the State Government intends to take in revision the particular order of allotment. Thereafter an order has been passed on 7th May, 1997 cancelling the said allotment which is under challenge in this petition. Mr.Joshi appearing for the petitioners submitted that firstly the notice dt. 4th March, 1997 is the notice of hearing only, though it refers to the order which is sought to be taken in revision. It does not give any ground for revision. Secondly, no show cause notice as such was given prior thereto. He further states that when the matter was heard, there were nearly 80 to 90 matters fixed for hearing on a particular day. The notice given to the petitioners gives them the number of hearing as 82. It is his submission that all these matters were heard in cursory manner and the petitioners did not get sufficient opportunity to defend the order which had been made earlier.

5. Mr. Dave on the other hand submitted that the notice for hearing indicated that the order of allotment was sought to be taken in revision. Besides he further states that the order passed on 9th May, 1997 indicates that the petitioners were heard. He also stated that the order indicates that the original allotment was made without resorting to normal method of allotment. It is material to note that Mr. Joshi has also raised the point as to whether the Secretary, Tourism had the jurisdiction to pass the impugned order.

6. The impugned order is of 9th May, 1997. A learned Single Judge of this court, on this petition being moved, passed an ad-interim order on 16th May, 1997 in terms of Para 20(c) of this petition which stays operation of the impugned order on the condition that the petitioners would not put up any construction on the land admeasuring 895 sq.mts. allotted to them under the order dt. 8th July, 1994 and 6th December, 1994, except raising a compound wall. That statement is reiterated by tendering the draft amendment which is permitted to be

carried out. Mr. Dave on the other hand submitted that before the order was passed by the learned Single Judge dt.16th May, 1997, on 15th May 1997, possession of the concerned land had been taken over by the respondents.

7. Mr. Joshi also submitted that if allotment of plot is made without resorting to auction, it would at the highest be an irregularity. It was something which the respondents were doing from time and again and presently also. He further submitted that for an isolated plot of land, it has been the Government policy not to have any auction. For this reason also he would like to maintain the order which had been passed earlier in favour of the petitioners.

8. In my view, instead of going into merits of these point, which have been raised in this petition, it will be advisable to direct the respondent no.1 to hear the petitioners again and pass appropriate order. This is for two reasons, firstly the manner in which the proceeding was conducted and the order was passed, is not very satisfactory and secondly, if the petition is admitted and interim relief granted is continued, it will not be beneficial to either of the party until matter is finally heard, because it will take quite sometimes. In my view, it is apparent that the petitioners were not given reasons or grounds on which the revision was sought to be effected. It is also apparent that large number of matters were decided at one particular time by holding hearing in the P.W.D. Circuit House at Saputara. When the rights of the petitioners are involved with respect to the allotments of land which are subsisting and which are sought to be cancelled, it would be expected from the Government to inform them as to why those allotments are being cancelled and if so, by affording an opportunity to them. The submission that there are other plots which are allotted without holding auction or that for isolated plots, it is the Government Policy, to allot them without holding auction etc. will be considered by the officer himself. For these reasons, in my view, it would be proper to interfere with the order dt. 9th May, 1997 passed by the respondents and to direct them to hear the petitioner again after giving them proper notice and indicating atleast the broad outlines of the grounds on which the order of allotment was sought to be revised. it is possible that all details may not be supplied but a broad indication ought to be given to the persons in whose favour the order of allotment subsists and as to whether the allotment is bad for an improper procedure or for breach on the part of the allottee himself etc. For these reasons, the impugned order is quashed and set

aside. Rule is made absolute for this limited purpose only.

9. As it transpires from what is stated hereinabove, it is the case of the respondents that they have already taken the possession of the concerned plot of land, whereas it is a case of the petitioners that they still continue to be in possession thereof. In that view of the matter, it will be proper to direct the parties to maintain status quo with respect to the plot of land which will mean that if it is in possession of the petitioners, then the petitioners will not proceed to carry any construction thereon and if it is in possession of the respondents, the respondents will not proceed to hold any auction or allot particular plot of land to somebody else, until order of allotment is either confirmed or revised after hearing the petitioners in accordance with law.

10. Notice of hearing to be held is to be given by the State of Gujarat. It will be for the State of Gujarat to decide as to who will give notice and hear. It will be open for the petitioners to raise all points that they have raised over here before the authority concerned including that of lack of jurisdiction, if it is their submission. Rule is made absolute accordingly. There will be no order as to costs.
